

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR21-109-RSL
)	
Plaintiff,)	REPLY REGARDING MOTION FOR
)	TEMPORARY RELEASE TO
v.)	LOCATION MONITORING FOR
)	FAMILY VISITATION
SEBASTIEN RAOULT,)	
)	
Defendant.)	

Sebastian Raoult, through Assistant Federal Public Defenders Vanessa Pai-Thompson, Dennis Carroll, and Mukund Rathi, moved for temporary release on location monitoring to visit his parents during their brief visit to the United States. The government’s arguments opposing release are unpersuasive. Mr. Raoult’s request should be granted. This Court should temporarily release Mr. Raoult because meeting with his parents and counsel together outside of prison is “necessary for preparation” of his and, additionally and separately, for his mental health, which is “another compelling reason” in this case given Mr. Raoult’s age, vulnerability, and harrowing experience in a Moroccan prison. 18 USC § 3142(i).

I. LEGAL STANDARD

The parties do not appear to disagree about the legal standard that applies to Mr. Raoult’s motion for temporary release. While the government does not think that Mr. Raoult *should* be released, it agrees that the Court has the power to release Mr. Raoult. *Compare* Dkt. 34 at 3-4, *with* dkt. 36 at 5-6.

1 Contrary to the Bail Reform Act, however, the government’s reply at times urges
 2 a higher standard of certainty, rather than reasonable assurance, that Mr. Raoult will
 3 appear for court. *See, e.g.*, Dkt. 36 at 2, 11 (describing inability to “ensure” Mr.
 4 Raoult’s return to custody and community safety). As this Court knows and the
 5 government acknowledges elsewhere in its reply, certainty is not the standard—
 6 reasonable assurance is. *Id.* at 11; 18 U.S.C. §§ 3142(c), (e)-(i).

7 18 U.S.C. § 3142(f) requires the government to show clear and convincing
 8 evidence that temporarily releasing Mr. Raoult will not reasonably assure the safety of
 9 the community, meaning that it is “highly probable or reasonably certain” that he poses
 10 a danger. *See United States v. Jordan*, 256 F.3d 922, 930 (9th Cir. 2001) (quoting
 11 Black’s Law Dictionary). The Constitution requires the government to show the same
 12 level of evidence as to his nonappearance.

13 Mr. Raoult “has a basic and significant liberty interest in not being confined
 14 pending trial.” *United States v. Motamedi*, 767 F.2d 1403, 1414 (9th Cir. 1985)
 15 (Boochever, J., concurring in part). Under *Addington v. Texas*, “the proper burden of
 16 proof is determined by weighing the magnitude of the societal and individual interests
 17 at stake in the determination, and assigning the risk of error accordingly.” *Id.* (citing
 18 441 U.S. 418, 425–27 (1979)). Pretrial detention infringes a liberty interest “more
 19 substantial than mere loss of money,” *Addington*, 441 U.S. at 424 (civil commitment),
 20 and thus requires clear and convincing evidence. *Motamedi*, 767 F.2d at 1414
 21 (Boochever, J.).

22 Some courts addressing other pretrial detention issues say the preponderance
 23 standard is “usually applied in pretrial proceedings.” *See, e.g., United States v. Orta*,
 24 760 F.2d 887, 891 (8th Cir. 1985) (citing *United States v. Freitas*, 602 F.Supp. 1283
 25 (N.D.Cal. 1985)). But *Freitas* cited cases about admitting evidence, not taking away an
 26 accused person’s liberty. 602 F.Supp. at 1293, citing *Lego v. Twomley*, 404 U.S. 477

(1972) (voluntariness of a confession); *United States v. Matlock*, 415 U.S. 164 (1974) (consent to a search).

The government must show that temporarily releasing Mr. Raoult will not reasonably assure safety *and* his appearance. “[T]he Bail Reform Act [does not] authorize[] pretrial detention without bail based solely on a finding of dangerousness.” *United States v. Twine*, 344 F.3d 987, 987 (9th Cir. 2003). Even under a preponderance of the evidence standard for flight risk, however, the government cannot show that Mr. Raoult must be detained.

II. THIS COURT SHOULD RELEASE MR. RAOULT WITH CONDITIONS INCLUDING HOME DETENTION, THIRD PARTY CUSTODIANS, AND HIS PARENTS’ PASSPORT SURRENDER.

A. This Court should not deny Mr. Raoult temporary release because he exercised his rights and his father advocated for him during the extradition process.

The government argues that Mr. Raoult and his family’s efforts *legally* advocating on his behalf during the extradition process is a basis to deny his motion for temporarily release. Dkt. 36 at 4-5. It further points to a newspaper article during which Mr. Raoult is described expressing hope that people might use legal methods to pursue his extradition to France instead of the United States and argues that this demonstrates he will flee. *Id.* The government’s conclusion overshoots its evidence.

People are entitled to avail themselves of legal process. The government’s arguments about Mr. Raoult litigating the extradition process and appealing for public support ultimately boil down to complaint that he did so. They do not, and cannot, connect the dots between trying to find legal remedies and not wishing imprisonment in the United States and inclination to flee active supervision to become an international fugitive. He did not seek to evade any criminal legal process and at most said he wanted to appear in French courts to fight his case there. He knows that is not an option now.

1 This Court should reject the government’s “fire and brimstone” rhetoric that the
2 factual record does not support.

3 **B. Mr. Raoult will have been interviewed by Pretrial Services prior to**
4 **the hearing on his motion for temporary release.**

5 Pretrial Services will interview Mr. Raoult at the Federal Detention center on
6 August 15, 2023. Any arguments based on absence of information will likely be mooted
7 by that interview.

8 **C. The government cannot establish clear and convincing or a**
9 **preponderance of evidence that Mr. Raoult will fail to appear based**
10 **on his alleged use of fake identities *online* and obtaining a fake**
11 **identification unsuitable for international travel.**

12 Mr. Raoult’s alleged conduct is insufficient under any standard of proof to show
13 that he will make and use fake travel documents for himself and his parents. First,
14 obtaining and using someone’s online username and password is not the same as and
15 obtaining and presenting a fake passport to a Transportation Safety Administration
16 (TSA) officer for scanning and inspection to board a plane. The ability and will to do
17 one does not imply ability and will to do the other.

18 Second, the government cannot show that Mr. Raoult could still reach his
19 alleged prior contacts who they state once helped him obtain a fake French identity card
20 (akin to a state identity card in the United States), or that they would be willing to help
21 him after his very public arrest. Additionally, the government’s filings in this case make
22 clear how closely his online activity has been scrutinized and the defense assumes that
23 the government would similarly be watching Mr. Raoult if he were released given
24 practice in this district. His circumstances would not be the same if the Court were to
25 temporarily release him. This is particularly true since Mr. Raoult has proposed that this
26 Court prohibit him from accessing the internet at all so *any* activity arguably tied to him
would immediately throw up a red flag.

1 Third, a fake French identity card would not even allow Mr. Raoult to travel to
2 France, according to a French Consulate website:

3 **The following countries accept the national identity card as a travel document:**

4 → European Union countries : Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Spain, Estonia, Finland,
5 Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, United
Kingdom, Slovakia, Slovenia, Sweden, Czech Republic;

6 → From the Schengen zone : Iceland, Liechtenstein, Norway, Switzerland;

7 → Andorra, Monaco, the Vatican, San Marino;

8 → Albania, ex/former Yugoslavian Republic of Macedonia, Bosnia-Herzegovina, Montenegro, Serbia ;

9 → Turkey;

10 → Egypt;

11 → Tunisia (only for those with dual citizenship or those taking part in group trips organized by a travel agent);

12 → Morocco (only for those with dual citizenship or those taking part in group trips organized by a travel agent).

13 **Translated fact sheets**  **for all these countries are available for download on the website of the Ministry of the Interior.**

14 To avoid any inconveniences during your stay, **you are urged to consider using a valid passport as opposed to an expired national ID card**, even if it's considered valid by the French authorities.

15 Consulate General of France in Cape Town website (available at:

16 <https://lecap.consulfrance.org/National-Identity-Card>). Forging a passport that would
17 pass TSA inspection is manifestly more difficult than forging something akin to a
18 driver's license that would have been looked at in passing. The government cannot
19 show that Mr. Raoult has connections to someone who could forge and provide three
20 passports to him in the United States in less than a week.

21 Finally, Mr. Raoult's parents would not go along with such a plan to help him
22 get out of the country. Nothing the government alleges comes even close to showing
23 that Mr. Raoult's parents would make themselves accessories to a federal crime in the
24 United States (particularly while their own passports were lodged at the courthouse.)
25 Mr. Raoult's father advocated for his son through legal means during the extradition
26 process, just as most parents would. The government seems to have assumed the worst
about Mr. Raoult's parents. The Court cannot, however.

Nothing about advocating for their son to return to France to face the French
legal system, or about calling attention to his conditions of confinement, suggest that

1 Mr. Raoult's parents would turn a blind eye to unlawful behavior, help him flee justice,
2 or commit crimes themselves.

3 **D. The cases to which the government cites do not apply to Mr. Raoult,**
4 **who has no history of violence or failures to appear, and would have**
5 **strict conditions and excellent supervision in this district.**

6 Mr. Raoult is unlike the accused persons in *Toledo Pardo*, *Schley*, and
7 *Rowelette*, who had prior convictions for offenses involving violence or weapons,
8 failures to appear, or both. Courts denied temporary release to Mr. Schley and Mr.
9 Rowelette after previously detaining them pending supervised release violations for
10 alleged new criminal conduct. Mr. Schley's alleged violations led to new charges. *See*
11 *United States v. Schley*, 2:22-cr-00166-JCC-1, Dkt. 1. Mr. Rowelette's alleged
12 violations were for alleged felony harassment, first degree assault, and possessing a
13 firearm. *United States v. Rowelette*, 2022 WL 2531815, at 1 (W.D. Wash. 2022). Mr.
14 Toledo Pardo had three prior convictions, including two related to domestic violence,
15 was arrested while violating a no contact order, and had "repeated failure[s] to appear."
16 *United States v. Toledo Pardo*, 2023 WL 4641055, at 1 (W.D. Wash. 2023).

17 The government points to only three cases where passport surrender and/or GPS
18 monitoring were insufficient to keep a person from fleeing. Dkt. 36 at 11. The out-of-
19 district case, *United States v. Orel Gohar*, No. 2:17-cr-00232, does not speak to the
20 effectiveness of United States Pretrial Services *in this district*. As the Court is aware,
21 the Western District of Washington has one of the highest pretrial release rates in the
22 country—owing in large part to how effective our Pretrial Services office is. A single
23 experience in another district is simply unhelpful in this context.

24 Underscoring this, the government had to reach back over nine years to find a
25 case in this district where a person fled while on GPS monitoring. Dkt. 36 at 11 (citing
26

1 *United States v. Ricky George*, No. 2:15-cr-0072).¹ This demonstrates that Pretrial
 2 Services effectively supervises people in this district. And unlike Mr. Raoult, Mr.
 3 George had failed to appear in court many times over a period of years. *George*, 2:11-
 4 cr-00208-RAJ, dkt. 63 at 4. The government summarized this nonappearance history as
 5 follows:

6 Defendant's Criminal History Category of I is extremely misleading and
 7 solely the result of his failure to address pending charges. Between 2008
 8 and 2013, defendant was charged in six different matters. PSR ¶¶ 30-35.
 9 Defendant failed to appear in all six matters, resulting in the issuance of
 10 warrants in all proceedings. The charges include the theft of credit cards
 11 and fraudulent use of those cards; an attempt to purchase a car with
 12 financing obtained under another person's identity, theft, and various
 13 incidents of providing false names to police officers.

14 In addition, the PSR identifies seven more arrests for offenses including
 15 theft, identity theft and driving without a license. The PSR notes that
 16 defendant had numerous failures to appear in connection with these
 17 matters as well. PSR ¶ 43.

18 *Id.* (Government's sentencing memorandum). Also unlike Mr. Raoult, Mr. George was
 19 not living and under supervision in this district when he fled. *Id.*, dkt. 56 at 2-3 (motion
 20 for bond modification) (describing supervision in the Central District of California).
 21 Finally, the government points to *United States v. Volodymyr Pigida*, No. 2:18-cr-294,
 22 which did not involve location monitoring or a third-party custodian, like Mr. Raoult
 23 proposes. Dkt. 22.

24 Over many years, Pretrial Services in this District has consistently demonstrated
 25 to the Court that it has the skill and capacity to successfully supervise people in the
 26 community. *See, e.g., United States v. Read*, No. 2:22-cr-00059-RSM-1 (released in
 aggravated identity theft and fraud case, on bond for over one year, surrendered for 36-

¹ The government subsequently charged Mr. George with failing to report for a
 sentence. The government cites the plea agreement in that case, which describes the
 failure to surrender in 2014.

month sentence); *United States v. Scott*, No. 2:21-cr-00072-RSL-1 (released in enticement of a minor case, complied with bond for roughly 10 months, surrendered for 120-month sentence); *United States v. Holcomb*, 2:21-cr-00075-RSL-1 (released in production of child pornography case, complied with bond for approximately two years, remanded following imposition of 240-month sentence); *United States v. Taylor*, 2:21-cr-00193-RSM-1) (released in wire fraud case, complied with bond for over one year, surrendered for 27-month sentence); *United States v. Hurd*, 2:20-cr-00156-RSM-1 (released in aggravated identity theft and bank fraud case, complied with bond for over 2.5 years, surrendered for 30-month sentence); *United States v. Morrill*, 3:20-cr-05443-BHS-1; (released following denial of government appeal of release in child pornography production case, complied with bond for over one year, surrendered for 240-month sentence); *United States v. Lozier*, 3:20-cr-05059-BHS-1 (released while facing child pornography receipt charge, complied with bond for over 17 months, surrendered for 24-month sentence); *United States v. Gilbert*, 2:20-cr-00170-RSM-1 (released while charged with child pornography possession, complied with bond for two years, sentenced to time served); *United States v. Deroche*, 2:19-cr-00197-RSL-1 (released while facing child pornography receipt charges, complied with bond for nearly two years, sentenced to probation); *United States v. Jelmberg*, 3:18-cr-05538-BHS-1 (released following denial of government appeal of release while facing aggravated sexual abuse of a child charges, complied with bond for approximately 2.5 years, surrendered for 96-month sentence).

E. Courts in this district have granted temporary release.

Courts in this district have granted temporary release where appropriate. *See, e.g., United States v. Spenser*, 3:21-cr-05291-DGE-1 (spending time with children following son's death); *United States v. Wilcher*, 3:19-cr-05277-BHS (release for

1 medical appointment with USMS escort); *United States v. Atofau*, 2:17-cr-00153-JCC-1
 2 (memorial service); *United States v. Gaines*, 2:16-cr-00211-RSL-1 (memorial service).

3 **F. Extended FDC visitation does not address the need for Mr. Raoult,**
 4 **his parents, and counsel to meet privately.**

5 The government does not address the defense's argument regarding need for Mr.
 6 Raoult, defense counsel, and Mr. Raoult's parents to meet together. The defense noted
 7 this because of its importance at this juncture of the case. Dkt. 34 at 3. Mr. Raoult is
 8 young and facing a tremendously important decision about whether to proceed to trial
 9 or enter into a plea agreement. It bears emphasis that Mr. Raoult is very young and still
 10 in a phase of life where people routinely consult with and rely upon their parents in
 11 making major decisions. Defense counsel believe that allowing him to be released
 12 temporarily will facilitate this process in a way that meeting at the FDC cannot.

13 First, defense counsel, Mr. Raoult, and his parents cannot effectively meet
 14 together to discuss his case at the FDC. The public visitation area at the FDC becomes
 15 crowded and the physical setting—lines of chairs facing one another—lacks privacy
 16 and confidentiality. Social visitors are not allowed to use the counsel visit rooms.

17 Second, speaking with loved ones by phone² or in a public visitation area does
 18 not allow for full and meaningful discussion for someone in Mr. Raoult's position. As
 19 the defense described in its initial motion, "[t]he computers with email access are in a
 20 public space in his jail unit, where it is not safe for a young, slight man to become
 21 visibly emotional." Dkt. 34 at 2. The government ignores this reality. It is a sad and
 22 unfortunate truth that young people, particularly physically slight young people, are

23 ² Counsel is investigating the government's belief that Mr. Raoult can call France
 24 directly from the FDC, counsel's understanding has been that he cannot. Even if France
 25 is available for direct-dial, the BOP's website indicates those calls would cost \$0.99 per
 26 minute. BOP website, "Long Distance Phone Rates Reduced" page (available at:
https://www.bop.gov/resources/news/20140212_reduced_phone_rate.jsp). Mr. Raoult
 cannot afford that.

1 uniquely vulnerable to exploitation and harassment within a jail setting. In counsel's
2 experience, incarcerated people, even those who are less vulnerable in custody than Mr.
3 Raoult, are reticent to be openly emotional in public areas because being viewed as
4 "weak" can place a target on their backs. Indeed, counsel routinely waits with clients in
5 the private counsel visit room after they have cried while they collect themselves
6 enough to feel comfortable re-entering a public space.

7 **III. CONCLUSION**

8 This Court should temporarily release Mr. Raoult to spend time with his parents
9 while they are in Seattle and meet jointly with them and counsel. He outlined conditions
10 in his initial motion that would reasonably assure Mr. Raoult's return to the FDC and
11 the safety of the community during his brief release to location monitoring and his
12 parents' custody. The government fails to show that this *combination* of conditions is
13 insufficient.

14 DATED this 14th day of August 2023.

15 Respectfully submitted,

16 *s/ Dennis Carroll*

17 *s/ Vanessa Pai-Thompson*

18 *s/ Mukund Rathi*

19 Assistant Federal Public Defenders

20 Attorneys for Sebastien Raoult